FILED

FEB 2 8 2019

U.S. DISTRICT COURT-WVND
MARTINSBURG, WV 25401

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROSS THACKER)
REG. NO. 14044-026)
FCI GILMER)
P.O. BOX 6000, GLENVILLE, WV 26351   ,)
(Full name under which you were convicted,)
prison number, place of confinement, and)
full mailing address))
)
Petitioner,)
vs.)
)
WARDEN, FCI MCDOWELL   ,)
(Name of Warden or other authorized person)
where you are incarcerated))
)
Respondent.)

Petition for Habeas Corpus
Pursuant to 28 U.S.C. § 2241

Coroh
Trumble
Sims

Civil Action No. _____3:19cv26_____
(to be assigned by Clerk)

Important notes to read before completing this form:

★ Please read the entire petition **before** filling it out. Answer **only** those questions which pertain to your claim(s).

1. This petition concerns (check the appropriate box):

   ☑ a conviction
   ☑ a sentence
   ☐ jail or prison conditions
   ☐ prison disciplinary proceedings
   ☐ a parole problem
   ☐ other, state briefly: _____

_____

_____

_____

2. Are you represented by counsel?   ☐ Yes   ☑ No

    If you answered yes, list your counsel's name and address: _____

    _____

    _____

3. List the name and location of the court which imposed your sentence:
    Central District of Illinois (Urbana) _____

    _____

    _____

4. List the case number, if known: **2:03-cr-20004-MPM-DGB-2** _____

5. List the nature of the offense for which the sentence was imposed:
    Cts 1s & 5s: Robbery, in violation of 18 U.S.C. §§ 1951 and 2;

    Cts 2s & 6s: Carrying Firearm in Furtherance of Crime of Violence, in violation of 18 U.S.C. § 924(c).

    _____

6. List the date each sentence was imposed and the terms of the sentence:
    03/10/2005 - 400 months total (16 months on Cts 1s & 5s, concurrent; 84 months on Count 2s, consecutive; and 300 months on Ct 6s, consecutive).

    _____

7. What was your plea to each count? (Check one)

    ☐   Guilty
    ☑   Not Guilty
    ☐   Nolo Contendere

8. If you were found guilty after a plea of not guilty, how was that finding made?

☑ A jury
☐ A Judge without a jury
☐ A Magistrate Judge without a jury

9. Did you appeal from the judgment of conviction or imposition of the sentence?

☑ Yes   ☐ No

10. If you did appeal, give the following information for each appeal:

A. Name of Court: __United States Court of Appeals for the Fourth Circuit__
B. Result: __Affirmed__
C. Date of Result: __11/21/2006__
D. Grounds raised (List each one): _____
    __Thacker argued that the Court abused its discretion by granting the government's motion in__
    __limine to block all evidence concerning his state court plea negotiations and ensuing agreement__

    _____

    _____

    Note: if you filed an appeal in more than one court, attach an additional sheet of paper of the same size and give all of the information requested in Question 10, A through D.

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? This is called a post-conviction pleading.

☑ Yes   ☐ No

If your answer was yes, complete the following sections:

A. First post-conviction proceeding:
    1. Name of Court: __Central District of Illinois (Urbana)__

    2.   Nature of Proceeding: Civil _____

    3.   Grounds Raised: See Memorandum of Law in Support _____

    4.   Did you receive an evidentiary hearing ?   ☐ Yes   ☑ No

    5.   Result: Denied _____

    6.   Date of Result: 10/19/2009 _____

B.   Second post-conviction proceeding:

    1.   Name of Court: _____

    2.   Nature of Proceeding: _____

    3.   Grounds Raised: _____

    4.   Did you receive an evidentiary hearing ? ☐ Yes   ☐ No

    5.   Result: _____

    6.   Date of Result: _____

C.   Did you appeal to the result of the post conviction proceeding(s) to the highest court having jurisdiction?

    1.   First proceeding: ☐ Yes   ☐ No   Result: _____

    2.   Second proceeding: ☐ Yes   ☐ No   Result: _____

D.   If you did not appeal the adverse result of the post-conviction proceeding(s), explain briefly why not: _____

_____

_____

12.   For your information, the following is a list of the most frequently raised grounds for relief in applications for habeas corpus pursuant to 28 U.S.C. §2241. You may raise any grounds which you may have other than those listed. However, in this application, you should raise all available grounds on which you base your petition. **Do not check** any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. **The petition will be returned to you if you merely check one or more of the grounds:**

A.   U.S. Parole Commission unlawfully revoked my parole.

B.   Federal Bureau of Prisons unlawfully computed my sentence.

C.   Federal Bureau of Prisons unlawfully denied me credit for time served in state or federal prison.

D.   Federal Bureau of Prisons or State prison system unlawfully revoked my good time credits.

E.   There is an unlawful detainer lodged against me.

F.   I am a citizen and resident of a foreign country and I am in custody for an act which I had a right to commit under the laws of my country.

G.   The act for which I was convicted is no longer considered to be a crime, and I cannot raise this issue in a §2254 petition or a §2255 motion.

CAUTION: if you fail to set forth all of the grounds in this petition at this time, you may be barred from presenting additional grounds at a later date.

State clearly every ground on which you are seeking relief. Summarize briefly the facts supporting each ground. If necessary, attach a total of five (5) typed or ten (10) neatly printed pages maximum for all grounds and all attachments.

A.   Ground one:

Thacker's 924(c) consecutive sentences on Counts 2s and 6s of the Superseding Indictment must be dismissed because it is null and void.

Supporting facts: tell your story briefly without citing cases or law. You are cautioned that you must state facts, not conclusion, in support of your grounds. A "rule of thumb" to follow is this: who did exactly what to violate your rights at what time and place).

In light of Johnson v. United States, 135 S.Ct. 2551 (2015) and Sessions v. Dimaya, 138 S. Ct. 1204 (2018), Thacker's 924(c) consecutive sentences on Counts 2s and 6s of the Superseding Indictment must be dismissed because it is null and void.

See Memorandum of Law in Support

B.   Ground two:

_____

_____

_____

_____

_____

Supporting facts:

_____

_____

_____

_____

_____

C.   Ground three:

_____

_____

_____

_____

_____

Supporting facts:

_____

_____

_____

_____

_____

D.   Ground four:

_____

_____

_____

_____

_____

Supporting facts:

_____
_____
_____
_____
_____

13.   Were all of the above grounds presented to another court, state or federal? If not, state which grounds were not presented. If yes, state the name of the court, date of decision, and the nature of the outcome:

No._____

_____
_____
_____
_____

14.   If this petition concerns prison disciplinary proceedings, a parole problem, computation of sentence, or other case under 28 U.S.C. § 2241, answer the following questions:

A.   Did you present the facts in relation to your present petition in the prison's internal grievance procedure?

☐ Yes   ☐ No

1.   If your answer to "A" above was yes, what was the result:

_____
_____
_____
_____
_____

2.   If your answer to "A" above was no, explain:

_____

_____

_____

B.   If you are a federal prisoner, did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

☐   Yes   ☐   No

1.   If your answer to "B" above was yes, what was the result:

_____

_____

_____

2.   If your answer to "B" above was no, explain:

_____

_____

_____

15.   Relief: State here, as briefly as possible, exactly what you want the court to do for you:

1.   Make **no** legal arguments.
2.   Cite **no** cases or statutes.

Hobbs Act robbery fails to qualify categorically as a "crime of violence" under § 924(c)'s force clause, and § 924(c)'s residual clause is unconstitutionally vague under Johnson. Thus, no legal basis exists for a

§ 924(c) conviction. Thacker respectfully requests that the Court grant his motion and dismiss Counts 2s and 6s of the Superseding Indictment, and remand to the district court for further proceedings.

_____

_____

_____

16.   If a previous motion to vacate or modify a prisoner's sentence, pursuant to Section 2255, was not filed, or if such a motion was filed and denied, the reasons why Petitioner's remedy by way of Section 2255 is inadequate or ineffective to test the legality of the detention.

_____

_____

_____

_____

_____

_____

_____

Signed this ___22___ day of _____2_____ , ___2019___ .
           (day)   (month)   (year)

_____
Your Signature

_____
Signature of Attorney (if any)

I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct.

Date of Signature: ___2/22/2019___   _____
                                                       Your Signature